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Local Counsel for Plaintiffs

UNITED STATES DISTRICT COURT
FOR THE NORTHERN DISTRICT OF CALIFORNIA
SAN FRANCISCO DIVISION

SIERRA CLUB, et al.,)	Case No. 3:08-cv-01409-WHA
)	
Plaintiffs,)	
)	
v.)	DECLARATION OF JOHN ROBISON
)	
STEPHEN JOHNSON, et al.,)	
)	
Defendants,)	
)	
and)	
)	
SUPERFUND SETTLEMENTS PROJECT, et al.,)	
)	
Defendant-Intervenors.)	

DECLARATION OF JOHN ROBISON
(Case No. 3:08-cv-01409-WHA)

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1 I, JOHN ROBISON, declare and state as follows:

2 1. I am over the age of 21 and competent to testify to all matters contained herein. I
3 reside at 1620 North 22nd Street, Boise, Idaho 83702. I have lived in Boise since September of
4 2001.

5 2. I am the Public Lands Director, and a member, of the Idaho Conservation League
6 (“ICL”). ICL is Idaho’s largest statewide conservation organization. ICL’s mission is to protect
7 Idaho’s clean water, wilderness, and quality of life. Founded in 1973, ICL today represents over
8 9,000 members, many of whom live in southeast Idaho and who are concerned about
9 environmental degradation from current and past open pit phosphate mining operations.

10 3. ICL is concerned about the adverse impact of phosphate mining to the
11 environment and human health of southeast Idaho, including impacts to water quality in streams
12 and groundwater, contamination of soil and sediments, and adverse impacts to aquatic life, birds,
13 wildlife and human health.

14 4. The wild and pristine lands of southeast Idaho comprise some of the most
15 important and biologically diverse areas in the Greater Yellowstone Ecosystem. The region’s
16 vast tracts of roadless forests – located on the Caribou-Targhee National Forest – are home to
17 hundreds of species of wildlife, including moose, elk, mule deer, gray wolf, and lynx. These
18 wildlands are widely recognized by scientists across the nation and in Idaho for their biological
19 diversity and importance. This mountainous area traps and holds snow from winter storms, snow
20 which in turn feeds the seeps, springs, and creeks that form the headwaters of the Portneuf, Bear,
21 Blackfoot, and Salt Rivers; streams renowned for the native cutthroat trout that inhabit them. In
22 the Salt River Basin, Crow Creek and its tributaries, such as Sage Creek and Deer Creek, are
23 considered a stronghold for Yellowstone cutthroat trout.

24 5. Unfortunately, groundwater and streams in this area are contaminated with
25 selenium from the many open-pit phosphate mines that populate the surrounding landscape. As
26 a result of the release of selenium from the phosphate mines, this remarkable ecosystem,
27 including its fish and wildlife, are placed at great risk. At least fifteen phosphate mines are
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1 currently being investigated as Superfund sites by federal and state authorities because of the
2 releases of selenium from waste rock at the mines.

3 6. Selenium, a naturally occurring element, is of particular environmental concern in
4 southeast Idaho for three reasons: (1) it occurs in unusually high concentrations in the rock that is
5 mined for phosphate; (2) it bioaccumulates in the food web, increasing in concentration in plants,
6 animals and fish; and (3) it causes a variety of toxic effects, including teratogenicity (embryonic
7 deformities) and death.

8 7. Once selenium-rich rock is mined and exposed to air and water, selenium is
9 readily transported by water away from the mine site. It enters groundwater and surface water
10 via seepage that leaches through waste material used either as fill or placed in dumps. Once it
11 enters water, selenium is persistent. Selenium concentrations increase in soil and stream
12 sediments, where the element is taken up by plants, fish, and animals.

13 8. ICL has observed its tragic consequences. In 1996 four horses became so sick
14 from ingesting selenium contaminated forage that they had to be euthanized. The land where the
15 horses were grazing was adjacent to the Dry Valley Phosphate Mine owned by Nu-West
16 Industries, Inc. (doing business as Agrium Conda Phosphate Corporations) and just downstream
17 from the South Maybe Canyon Phosphate Mine, also owned by Nu-West. The selenium that
18 poisoned the horses leached from overburden dumps and mine pits at the South Maybe Canyon
19 Mine. The deaths of horses were followed in subsequent years by the deaths of more than 600
20 domestic sheep from selenium poisoning related to phosphate mining.

21 9. In response to these deaths and growing evidence of widespread selenium
22 contamination, in 2001, state authorities and federal agencies (U.S. Environmental Protection
23 Agency, U.S. Department of Agriculture, U.S. Department of the Interior, Bureau of Land
24 Management, U.S. Fish and Wildlife Service, Bureau of Indian Affairs) and the Shoshone-
25 Bannock Indian Tribes entered into a Consent Order/Administrative Order on Consent pursuant
26 to the Comprehensive Environmental Response, Compensation and Liability Act ("CERCLA")
27 with five phosphate mining companies (J.R. Simplot Company, Nu-West Industries, Inc., Rhodia
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1 Inc., FMC Corporation, and P-4 Production, L.L.C) to conduct a broad investigation into the
2 release of hazardous substances into the environment from the numerous phosphate mines owned
3 and operated by the five companies (“Area-wide Investigation of Contamination from Phosphate
4 Mining in Southeastern Idaho”). As a result of the findings of the Area-Wide Investigation,
5 federal and state agencies entered into several Administrative Orders on Consent to conduct
6 more detailed investigations into several of the phosphate mines where the release of selenium
7 from waste rock threatened the environment, including the South Maybe Canyon Mine, the
8 North Maybe Canyon Mine, and the Smoky Canyon Mine. To date, these investigations have
9 lead to one Superfund clean-up (a removal action) at the Smoky Canyon Mine.

10 10. As the Public Lands Director, I am ICL’s lead staff for our organization’s work
11 on both hardrock mining and phosphate mining on public land. I am in charge of reviewing and
12 commenting on proposed mineral exploration and mining projects on public land for ICL. ICL’s
13 work has included commenting on proposed phosphate mines, litigation over inadequate bonding
14 at mine sites, and grassroots organizing to reform the Mining Law of 1872, which governs
15 hardrock mining. Our organization has submitted comments on numerous phosphate mining
16 operations, including Agrium’s North Rasmussen Ridge Mine, Simplot’s Smoky Canyon Mine
17 including the proposed mine expansion, Monsanto’s Blackfoot Bridge Project, the Wells Canyon
18 exploration project and Simplot’s South Manning Creek exploration project – all of which are
19 located on the Caribou-Targhee National Forest. I have also toured North and South Rasmussen
20 Ridge Mines as well as the Blackfoot Bridge proposed phosphate mine site.

21 11. In 2004, ICL, with the Greater Yellowstone Coalition, brought suit against Nu-
22 West Industries, Inc. for violations of the Clean Water Act by discharging pollutants, including
23 dangerous levels of selenium, from its North Maybe Phosphate Mine into East Mill Creek.
24 (Civil Case No. 04-116-E- BLW) A perennial flow of water seeps through a waste rock dump at
25 the mine, leaching pollutants and draining into the creek, which eventually flows into the
26 Blackfoot River, a spawning habitat for trout.

27 12. ICL was one of two non-governmental entities that participated in the Idaho
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1 Department of Environmental Quality's 2007 negotiated rulemaking process on protection of
2 Idaho's Groundwater Protection Rule and testified in the Idaho statehouse in 2008 regarding this
3 rulemaking process – which, if enacted, will directly affect existing and future phosphate mining
4 operations on the Caribou-Targhee National Forest, including the Smoky Canyon Mine. In
5 2008, ICL again participated in the second iteration of the negotiated rulemaking process.

6 13. ICL is particularly concerned that current and proposed phosphate mining in
7 southeast Idaho will continue to release dangerous amounts of hazardous substances, including
8 selenium, into the environment, thereby contaminating groundwater, surface water, soil, and
9 vegetation and thereby harming wildlife, aquatic life, birds, and human health.

10 14. Based on the sources indicated, I am aware of the following:

11 a. Selenium at levels toxic to fish has been released by numerous phosphate
12 mines, and the persistence of this contamination will have serious adverse impacts on trout
13 populations in southeast Idaho (Upper Snake River Basin). Van Kirk, R.W. and S.L. Hill.
14 2007. Demographic model predicts trout population response to selenium based on
15 individual-level toxicity. Ecological Modeling 206:407-420. Greater Yellowstone Coalition
16 et al. Comments on the Smoky Canyon Mine Panels F&G Expansion Final EIS, December
17 21, 2007, including the 22 appendices (hereinafter "GYC FEIS Comments").

18 b. Cleanup of the phosphate mines to prevent further releases has not yet
19 occurred. GYC FEIS Comments. See Section III.C.

20 c. Clean-up of waste rock dumps that release selenium to the environment can
21 be difficult and costly, potentially exceeding \$100 million dollars. (Engineering
22 Evaluation/Cost Analysis Smoky Canyon Mine, Caribou County, Idaho May 2006.)

23 d. The original bonding at the phosphate mines did not anticipate this selenium
24 issue and did not include funding for clean-up for release of hazardous substances. Final
25 Environmental Impact Statement, Smoky Canyon Mine, Panels F&G, Caribou County,
26 Idaho, October 2007, 2-14.

27 15. J.R. Simplot's Smoky Canyon Mine is one of the phosphate mines that has
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1 released very high levels of selenium to groundwater and streams from its waste rock dumps.
2 Because of our concern over the degradation of the environment by the Smoky Canyon Mine,
3 ICL participated at every stage of the environmental review process for the proposed Smoky
4 Canyon Mine expansion.

5 a. On October 17, 2003, ICL submitted ten pages of comments outlining the
6 significant issues we believed the EIS had to analyze in order for the decision makers and
7 the public to fully understand the environmental effects of the proposal. ICL requested that
8 the EIS review the legality of phosphate leasing under the 2001 Roadless Rule, bonding,
9 road construction, reclamation and revegetation, water quality, groundwater contamination,
10 hazardous materials, monitoring, air quality, wildlife, fisheries, off highway vehicles,
11 noxious weeds, recreation, grazing, and cumulative effects.

12 b. The Forest Service and BLM issued a Draft Environmental Impact
13 Statement (EIS) for comment for the Smoky Canyon Mine Panels F&G Expansion in
14 December 2005. On March 20, 2006, ICL, along with the Greater Yellowstone Coalition,
15 the Natural Resources Defense Council, East Idaho Group Sierra Club, and others submitted
16 more than three hundred pages of comments on the Draft EIS, which included the analyses
17 of seven experts on various issues related to the proposed mine expansion.

18 c. On October 26, 2007, the BLM and Forest Service made available for public
19 review, the final EIS for the Smoky Canyon Mine Panels F&G Expansion and asked the
20 public for relevant, new information. ICL, along with the Greater Yellowstone Coalition,
21 the Natural Resources Defense Council and other organizations provided the agencies with
22 more than 520 pages of comment on the final EIS, all of which constituted new information.

23 16. Other places that have experienced increased selenium loads from phosphate
24 mining include the Blackfoot River drainage and the Salt River drainage.

25 17. I and other ICL members use and enjoy National Forest lands in Idaho to fish,
26 hike, camp, bike ride, bird watch, and botanize. These special places include the Sage Creek and
27 Meade Peak Roadless Areas on the Caribou-Targhee National Forest that are impacted by the
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1 release of harmful levels of selenium from the phosphate mines.

2 18. I certainly intend to return to this National Forest this summer and believe that
3 other ICL members will as well. My ability to use and enjoy this National Forest depends on
4 maintaining the high water quality and pristine nature of these undisturbed areas.

5 19. I personally regularly seek out public lands for my recreation interests. I have
6 specifically gone to the Blackfoot River Wildlife Management Area within the area of phosphate
7 mining to fly fish for native Yellowstone cutthroat trout. I have also traveled on the Caribou-
8 Targhee National Forest to bird watch, especially for sandhill cranes that frequent the meadows.
9 Other wildlife I have enjoyed watching on the Caribou-Targhee National Forest, and specifically
10 next to the South Maybe Canyon Mine, include moose and mule deer. I have also kayaked the
11 Black Canyon of the Bear River downstream from Soda Springs. I plan to continue to visit and
12 enjoy these wild places.

13 20. I am concerned that the mining companies will not have sufficient resources to
14 clean up in a complete and timely way the waste rock dumps at the southeast Idaho phosphate
15 mines. Southeast Idaho is already plagued by numerous "orphan" phosphate mines that continue
16 to release selenium to the environment but that are no longer operating and for which no viable
17 corporate entity is responsible for clean-up.

18 21. With the expiration of the Superfund tax, there are insufficient federal funds for
19 clean-up of such orphan sites in a timely manner. Thus I am concerned that the fifteen phosphate
20 mines that are Superfund sites may not be cleaned up if the responsible parties cannot fund the
21 remediation.

22 22. Failure to clean up the phosphate mines in southeast Idaho in a timely manner will
23 result in degraded water quality from selenium contamination, harm to resident fish, and other
24 environmental harms. This degradation will directly harm my interests and the interests of ICL's
25 members in maintaining clean water, important habitat for Yellowstone cutthroat trout, and the
26 scenery and amenities important to the economy of southeast Idaho and southwest Wyoming.

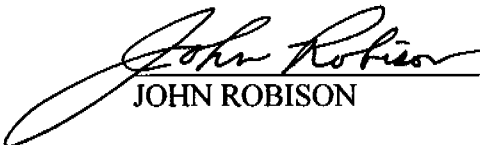
27 23. If the U.S. Environmental Protection Agency required companies that generate
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1 hazardous substances, like mines, to provide financial assurance to clean up the pollution caused
2 by their activities, the groundwater and streams in the Caribou-Targhee National Forest may
3 never have been polluted. Without such financial assurances, I am not sure if the pollution
4 generated by the mines will ever be cleaned up by the operators of the mines.

5 24. If the U.S. Environmental Protection Agency promulgates regulations that require
6 the operating phosphate mines in southeast Idaho to maintain financial assurance, adequate funds
7 for clean-up of the mines will be available in the future, and the mine owners will have greater
8 incentive to run the mine to prevent pollution.

9 25. If the U.S. Environmental Protection Agency promulgates regulations that require
10 companies that generate and handle hazardous substances to maintain financial assurances for
11 clean-up, pollution of other rivers may be prevented and more timely and complete clean-ups
12 may occur.

13 Pursuant to 28 U.S.C. 1746, I declare under penalty of perjury that the foregoing is true and
14 correct to the best of my knowledge. Executed this 25th day of August, 2008, at Boise, Idaho.

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16
17 
18 JOHN ROBISON